

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 14, 2008

D051717 In re Kayla M. et al., Juveniles

The finds and orders are affirmed. Haller, J.; We Concur: Benke, Acting P.J., Nares, J.

D049784 People v. Jackson

The matter is remanded for resentencing on both the substantive offense and the firearm allegation. In all other respects the judgment is affirmed. Benke, Acting P.J.; We Concur: Nares, J., Irion, J.

D052709 Geidel v. Superior Court of San Diego County/Ahles

The petition for writ of mandate has been read and considered by Presiding Justice McConnell and Associate Justices McDonald and Irion. The petition is denied.

D052273 In re Fekadu on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices McDonald and Irion.

Petitioner Berihu Fekadu was found not guilty by reason of insanity of two counts of forcible lewd act upon a child and three counts of assault with a deadly weapon likely to cause great bodily injury. He has been committed to the State Department of Mental Health since 1996. The trial court recently extended his commitment until October 2008. Fekadu appealed the extension and this court affirmed the trial court's judgment in all respects. (*People v. Fekadu* (Sept. 18, 2007, D050097) [nonpub. opn.])

In this petition, Fekadu claims that he was wrongfully convicted because of the actions of the police, his attorneys, and the judges who handled his cases. He also claims that he was mistreated when he was housed at Patton State Hospital and he is continuing to be mistreated now that he is housed at Napa State Hospital.

Fekadu's wrongful conviction claims are procedurally barred because they are untimely, repetitive, and successive. (*In re Clark* (1993) 5 Cal.4th 750, 797-798.) Fekadu's mistreatment claims fail to state a prima facie case for relief because Fekadu has not stated sufficient facts and has not presented any evidence to support them. (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475.)

The petition is denied.

D052763 In re Winter on Habeas Corpus

The petition for a writ of habeas corpus has been read and considered by Justices Haller, McDonald and Irion. We take judicial notice of the February 8, 2008, minute order in San Diego Superior Court case No. P165714. The petition is denied.

D049822 People v. Woodruff

The petition for rehearing is denied.

Court convened at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 14, 2008 (Continued)

Present: The Honorable Judith McConnell, Presiding Justice and The Honorable Associate Justices Richard Huffman and Judith Haller
Clerk: D. Moore

D050560 People v. Coleman

Cause called on merits. Matthew Braner, Deputy Public Defender argued for appellant. Elizabeth Voorhies, Deputy Attorney General argued for respondent. Ms. Voorhies replied. Cause submitted.

D049655 People v. Graham

Cause called on merits. Charles R. Khoury, Esq. argued for appellant. Sharon Rhodes, Deputy Attorney General argued for respondent. Mr. Khoury replied. Cause submitted.

D049152 People v. Ziskin

Cause called on merits. Nancy J. King, Esq. argued for appellant. James Flaherty, Deputy Attorney General argued for respondent. Ms. King replied. Cause submitted.

Court recessed at 10:13 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre
Clerk: D. Moore

D049921 People v. Mito

Cause called on merits. Steven Schorr, Esq. argued for appellant. Alana Butler, Deputy Attorney General argued for respondent. Mr. Schorr replied. Cause submitted.

D050405 Moreno et al. v. City of Imperial Beach

Cause called on merits. John J. McAvoy, Esq. argued for appellant. Steven E. Boehmer, Esq. argued for respondent. Mr. McAvoy replied. Cause submitted.

D050430 People v. David Munoz

Cause called on merits. Dacia Burz, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General submitted on the briefs. Cause submitted.

D049934 Ericson v. Federal Express Corporation

Cause called on merits. Jon R. Williams, Esq. argued for appellant. John Morris, Esq. argued for respondent. Mr. Williams replied. Cause submitted.

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DIVISION ONE

April 14, 2008 (Continued)

D049788 Luce, Forward, Hamilton & Scripps LLP v. Koch et al.

Cause called on merits. Roland Eugene Bye, Esq. for appellant. Charles Bird, Esq. argued for respondent. Mr. Bye replied. Cause submitted.

Court recessed at 3:30 p.m. until Tuesday, April 15, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 15, 2008

D050934 In re Viray on Habeas Corpus

The Governor's decision to reverse the Board's order granting parole to Viray is vacated, and the Board's parole release order is reinstated. CERTIFIED FOR PUBLICATION. McIntyre, J.; I Concur: McDonald, J., I concur in the result: Haller, Acting P.J.

D051571 People v. Averhart

Judgment affirmed. McIntyre, J.; We Concur: Huffman, Acting P.J., Nares, J.

D051723 People v. Smith

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Huffman, J.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion
Clerk: D. Moore

D049583 People v. Dablon

Cause called on merits. Rudy Kraft, Esq. argued for appellant. Lois Seong, Certified Law Student argued for respondent. Mr. Kraft replied.

D049582 People v. Vehar

Cause called on merits. Rudy Kraft, Esq. argued for appellant. Lois Seong, Certified Law Student argued for respondent. Mr. Kraft replied.

Court recessed at 10:15 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion
Clerk: D. Moore

D050872 McCain v. Kruger

Cause called on merits. Craig Gross, Esq. argued for appellant. P. A. Quint, Esq. argued for respondent. Mr. Gross replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 15, 2008 (Continued)

D049510 Pauma Ridge Mutual Water Company et al. v. Birch et al.

Cause called on merits. Henry E. Heater, Esq. argued for appellant. Martin Buchanan, Esq. argued for respondent. Mr. Heater replied. Cause submitted.

D050637 Pauma Ridge Mutual Water Company v. Birch

Cause called on merits. George B. Blackmar, Esq. argued for appellant. Henry E. Heater, Esq. argued for respondent. Mr. Blackmar replied. Cause submitted.

Court recessed at 2:47 p.m. until Wednesday, April 16, 2007 at 9:00 a.m.

D052699 Randall R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Randall R. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

D052232 In re Brendan D., a Juvenile

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.) The court notes that the appeal is not from an appealable order.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 16, 2008

D051619 Warburton et al. v. Superior Court of San Diego County/Zinner et al.

Let a writ of mandate issue vacating the trial court's order compelling arbitration and granting joinder, and directing the trial court to determine whether the Zinners waived the right to compel arbitration by participation in litigation. Should the trial court determine the Zinners did not waive their right to compel arbitration, it should decide whether the joinder motion was timely. The stay issued on September 18, 2007, is vacated. Costs are awarded to the petitioners. (Cal. Rules of Court, rule 8.490 (m)(2).) O'Rourke, J.; We Concur: Huffman, Acting P.J., Haller, J.

D051836 In re Joshua G., a Juvenile

The appeal is dismissed. Haller, J.; We Concur: McConnell, P.J., Nares, J.

D052445 In re Weaver on Habeas Corpus

The petition is denied.

D050031 People v. Smith

The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., McIntyre, J.

D048251 People v. Zaragoza

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D051957 In re Ryder M., a Juvenile

The dispositional order is affirmed. Aaron, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D051597 People v. Reyes

The judgment is reversed and the cause remanded to the trial court. Upon a motion to withdraw Reyes's guilty plea within 30 days of the finality of this decision, the trial court is directed to vacate the guilty plea, reinstate all charges and allegations in the information and proceed in accordance with the views expressed in this opinion. If Reyes fails to make a timely motion or waives the right to withdraw his plea, the trial court is directed to reinstate the judgment. Benke, Acting P.J.; We Concur: Huffman, J., Aaron, J.

D051368 Hullett v. Superior Court of Imperial County/Hartford Life and Accident Insurance Co. et al.

Let a writ of mandate issue ordering the superior court to: (1) vacate its orders sustaining the demurrers to all causes of action without leave to amend, and (2) enter new orders overruling the demurrer as to the third cause of action, and allowing leave to amend as to the fourth, fifth and sixth causes of action, and to allow such further proceedings as may be appropriate. Each party shall pay its own costs in this writ proceeding. Huffman, Acting P.J.; We Concur: Nares, J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
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April 16, 2008 (Continued)

D052457 Weaver v. Superior Court of San Diego County/People
The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable
Associate Justices Judith Haller and James McIntyre
Clerk: D. Moore

D049536 Lepker et al. v. Scope Orthotics and Prosthetics, Inc.
Cause called on merits. Penelope Phillips, Esq. argued for appellant. Matthew S. Levinson, Esq.
argued for respondent. Cause submitted.

D051144 Evans v. Evans
Cause called on merits. Linda A. Evans, argued for appellant in pro per. Cary Kinkead, Esq.
argued for respondent. Cause submitted.

D050482 Avila v. Department of Motor Vehicles
Cause called on merits. Robert Avila, argued for appellant in pro per. Evan Sorem, Deputy
Attorney General argued for respondent. Mr. Avila replied. Cause submitted.

D050426 People v. George Joseph Munoz
Cause called on merits. Joanna McKim, Esq. argued for appellant. Elizabeth Voorhies, Deputy
Attorney General argued for respondent. Cause submitted.

D050785 Moore v. Schiefer
Cause called on merits. E. David Wininger, Esq. argued for appellant. William C. Pultz, Esq.
argued for respondent, DeForge. Mr. Wininger replied. Cause submitted.

Court recessed at 10:00 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate
Justices Richard Huffman and James McIntyre
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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April 16, 2008 (Continued)

D051046 In re Adrian A. et al., Juveniles

Cause called on merits. Monica Vogelmann, Esq. was present telephonically, for appellant, Regina A., and joined in the arguments of father and minor's counsel. Roni Keller, Esq. argued for appellant, Andres A. Valerie Lankford, Esq. argued for the minor. Gary Seiser, Deputy County Counsel argued for respondent. Mr. Vogelmann replied. Ms. Keller replied. Ms. Lankford replied. Cause submitted.

D049944 Kelly-McCall v. The Vons Companies Inc., et al.

Cause called on merits. Diane Elizabeth Bond, Esq. argued for appellant. Michael Kalt, Esq. argued for respondent. Ms. Bond replied. Cause submitted.

Court recessed at 2:30 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion

D049207 Gordon et al. v. Reliant Energy Inc., et al.

Cause called on merits, Michael J. Uda, Esq. argued for appellant, State of Montana. Matthew Joseph Zevin, Esq. argued for respondent, Egger and etc. Pamela M. Parker, Esq. argued for respondent, Gordon and etc. Christopher J. Healey, Esq. argued for respondent, Reliant Energy, Inc., and etc. Mr. Uda replied. Cause submitted.

Court recessed at 3:30 p.m. until Thursday, April 17, 2008 at 9:00 a.m.

D052727 In re Jacobs on Habeas Corpus

The petition is denied.

D052327 In re Shea on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D051798 Marriage of Hindman

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

D052558 In re Tobi W., a Juvenile

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

D048970 Evans v. Dixon

The judgment is reversed and the matter is remanded to the trial court with directions to enter judgment in favor of Evans. Aaron, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D050844 People v. Froide

The judgment is affirmed. Aaron, J.; We Concur: McConnell, P.J., Nares, J.

D049774 DM Partners v. San Dieguito Partnership et al.

The order directing that the settlement funds be released to Revelle is reversed. Appellant to recover its costs on appeal. Benke, Acting P.J.; We Concur: Huffman, J., Aaron, J.

D051472 People v. Fisher

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Aaron, J.

D050331 In re Jonah G., a Juvenile

The judgment is affirmed. Irion, J.; We Concur: Nares, Acting P.J., Haller, J.

D051828 People v. Montiel

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Haller, J.

D049980 Jaramillo v. State Board for Geologists and Geophysicists

The judgment is affirmed. The Board shall recover from Jaramillo its costs on appeal. Nares, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D052517 Vielbig v. Superior Court of Imperial County/People

The petition is denied.

D052770 Mahdavi v. Superior Court of San Diego County/People

The motion to recuse is denied. The stay issued April 2, 2008 is vacated. The petition is dismissed for petitioner's failure to submit an application for a prefiling order within the time required.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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April 17, 2008 (Continued)

D052326 In re Lopez on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron
Clerk: D. Moore

D048294 People v. Whitmore

Cause called on merits. Patrick Morgan Ford, Esq. argued for appellant. Christopher Beesley, Deputy Attorney General argued for respondent. Mr. Ford replied. Cause submitted.

Court recessed at 9:25 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D050807 Ihrig v. Interinsurance Exchange of the Automobile Club

Cause called on merits. Maxine Judith Lebowitz, Esq. argued for respondent. Robert Louis Wallenstein, Esq. replied for appellant. Cause submitted.

Court recessed at 9:31 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion
Clerk: D. Moore

D051726 In re Austin E., a Juvenile

Cause called on merits. Christy Curtis Peterson, Esq. argued for appellant. Suzanne Evans, Esq. argued for the minor. Dana Shoffner, Deputy County Counsel argued for respondent. Ms. Peterson replied. Cause submitted.

D049670 Nabi v. Ali

Cause called on merits. Jon R. Williams, Esq. argued for appellant. Paul Hubert Corson, Esq. argued for respondent. Mr. Williams replied. Cause submitted.

Court adjourned at 2:36 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
April 17, 2008 (Continued)

D052578 In re the Marriage of Evans

The appeal is reinstated.

D050659 Martin v. West Credit Corp. Inc., et al.

Appellant's document entitled "Reconsider Appeal of Gerald Martin" received on April 16, 2008, is treated as a petition for rehearing and is DENIED.

D051738 Moore v. Department of General Services

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

D052728 Trejo et al. v. United Title Company

Because appellant did not timely pay the filing fee, the appeal is dismissed. (Cal. Rules of Court, rule 8.100(c)(3).)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D052155 In re Adrian C., a Juvenile

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Huffman, J.

D051250 In re Nate T., a Juvenile

The orders are affirmed. Aaron, J.; We Concur: Haller, Acting P.J., McIntyre, J.

D050782 Kibble v. Mork

The judgment is affirmed. Kibble shall recover his costs on appeal. Nares, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D050872 McCain v. Kruger

The judgment is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Irion, J.

D049582 People v. Vehar

The order is affirmed. McDonald, J.; We Concur: Nares, Acting P.J., Irion, J.

D049583 People v. Dablon

The order is affirmed. McDonald, J.; We Concur: Nares, Acting P.J., Irion, J.

D049471 Keener et al. v. Jeld-Wen Inc., et al.

The petition for rehearing is denied.

D052332 In re Jones-Bey on Habeas Corpus

The petition for a writ of habeas corpus and supplement filed on February 25, 2008, have been read and considered by Presiding Justice McConnell and Associate Justices McDonald and Irion.

According to the documents provided, on April 24, 2006, Jones pleaded guilty to petty theft with a prior theft conviction in San Diego County (SCN195245). On July 12, 2006, the court sentenced Jones to prison for five years.

In this petition, Jones contends the California Department of Corrections and Rehabilitation (CDCR) denied him due process because it did not follow the proper procedures when it rejected his request to reduce his sentence for heroic acts he performed while incarcerated, as authorized by Penal Code section 2935. Jones claims there is favorable information that was not available at the time he was sentenced and the various courts have not adequately addressed his contentions.

The voluminous documents Jones provided reflect he has received review by the classification committee regarding his request for sentence reduction. On November 15, 1999, Jones received 30 days' reduction in his sentence for aiding a prison staff member who had passed out. Jones has received multiple reviews of his inmate appeals through the director's level regarding sentence reduction and programming issues. Jones has not shown he is entitled to habeas corpus relief.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

April 18, 2008 (Continued)

D051015 In re Vasquez on Habeas Corpus

The Governor's decision to reverse the Board's order granting parole to Vasquez is vacated, and the Board's parole release order is reinstated. McIntyre, J.; I Concur: McDonald, J.,
I Respectfully Dissent (by opinion): Haller, Acting P.J.

D050167 Duckor Spradling etc. v. Blackburn et al

D050931 Duckor Spradling etc. v. Blackburn et al

Consolidated Appeals. In appeal number D050167, the judgment confirming the arbitration award is reversed. In appeal number D050931, the postjudgment order awarding attorney fees is reversed. Appellants are entitled to their costs in both appeals. McIntyre, J.;
We Concur: McConnell, P.J., Huffman, J.

D049468 Allison-Zongker LP v. CHLN, Inc.

The judgment is affirmed. Respondent shall recover its costs on appeal. Nares, J.;
We Concur: McConnell, P.J., Aaron, J.

D052335 In re Davenport on Habeas Corpus

The petition is denied.

D052341 In re Maurice F., a Juvenile

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

D052844 In re Smith on Habeas Corpus

The application for bail pending appeal has been read and considered by Presiding Justice McConnell and Associate Justices Benke and Haller.

Contrary to the assertion in the application, there will be no "final disposition" in this case until the remittitur issues. The application is denied.

D052642 Hills v. Superior Court of San Diego County/People

The petition for a writ of mandate has been read and considered by Presiding Justice McConnell and Associate Justices O'Rourke and Irion. We take judicial notice of San Diego Superior Court case No. SCD204653.

Melvin Hills seeks a writ of mandate to compel the superior court to rule on his motion for return of \$522 seized by the San Diego Police Department. The record shows the court denied the motion without prejudice on March 18, 2008. Hills may refile the motion after his appeal is final (D051751) and if the custodian of the property rejects his claim. A copy of the March 18, 2008, order is appended.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D052855 Negrete v. Superior Court of San Diego County/Becerra et al.
The petition is denied.